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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re

DEAN SCOTT HASTEN,

On Habeas Corpus.

F077825

(Super. Ct. No. 4006542)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus. Thomas D. Zeff, Judge.

Dean Scott Hasten, in pro. per, for Petitioner.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Max Feinstat and Kevin M. Cornwall, Deputy Attorneys General, for Respondent.

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Dean Scott Hasten (petitioner) seeks permission to file a belated notice of appeal by way of a petition for writ of habeas corpus, to challenge his convictions for

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\* Before Detjen, Acting P.J., Meehan, J. and Snauffer, J.

unauthorized use of personal information in violation of Penal Code section 530.5,<sup>1</sup> with two prior prison term enhancements (§ 667.5, subd. (b)).

### **STATEMENT OF THE FACTS**

Jessica S. Self represented petitioner at trial. In his petition, petitioner stated that after being sentenced on March 23, 2018, he attempted to get in touch with Ms. Self by mail to have her file an appeal. He received no response before his time to appeal expired on May 22, 2018.

On May 30, 2018, petitioner states his pastor, Dean Dodd, called Stanislaus County Superior Court and discovered no appeal was filed. On July 23, 2018, petitioner filed this petition for writ of habeas corpus requesting leave to file a belated appeal. Ms. Self declined this court's request to respond to the instant petition.

On November 5, 2018, this court issued an order granting the Attorney General leave to file a response.

On November 19, 2018, the Attorney General filed an informal response conceding petitioner appears to have stated a prima facie case for relief from default.

### **DISCUSSION**

A notice of appeal must be filed within 60 days after the judgment or order being appealed to confer appellate jurisdiction on this court. (Cal. Rules of Court, rule 8.308(a).) An appealable judgment in a criminal case is generally rendered at the time of sentencing. (§ 1237, subd. (a).) Based on petitioner's March 23, 2018, sentencing, a timely notice of appeal must have been filed by May 22, 2018.

A criminal defendant has the burden of timely filing a notice of appeal, but that burden may be delegated to counsel. (*In re Fountain* (1977) 74 Cal.App.3d 715, 719.) When applicable, the doctrine of constructive filing allows an untimely filed notice of

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<sup>1</sup> All statutory references are to the Penal Code.

appeal to be deemed timely if the defendant relied upon the promise of trial counsel to timely file the notice on the defendant's behalf and displayed diligence in seeing that his attorney has discharged this responsibility. (*In re Benoit* (1973) 10 Cal.3d 72, 86-87, 89.) "A criminal defendant seeking relief from his default in failing to file a timely notice of appeal is entitled to such relief, absent waiver or estoppel due to delay, if he made a timely request of his trial attorney to file a notice of appeal, thereby placing the attorney under a duty to file it, instruct the defendant how to file it, or secure other counsel for him [citation]; or if the attorney made a timely promise to file a notice of appeal, thereby invoking reasonable reliance on the part of the defendant." (*People v. Sanchez* (1969) 1 Cal.3d 496, 500.) Reasonable doubts as to the veracity of a petitioner's allegations in these matters are to be resolved in favor of the petitioner to protect the right of appeal rather than forfeit it on technical grounds. (Cf. *People v. Rodriguez* (1971) 4 Cal.3d 73, 79; see *In re Benoit*, *supra*, 10 Cal.3d at p. 89.)

In petitioning this court, petitioner declares under penalty of perjury that he attempted to contact his trial attorney to file a notice of appeal within the 60-day filing window following his sentencing on March 23, 2018. After he did not receive a response from his trial attorney, petitioner states that he discovered an appeal was not filed on May 30, 2018, and he promptly filed this petition requesting leave to file a belated appeal. Petitioner's attorney has declined to respond to the allegation. In its response, the Attorney General concedes petitioner has stated a *prima facie* case for relief.

Based on petitioner's statement that he attempted to contact his trial attorney to file an appeal, and the absence of contradicting statements from petitioner's attorney or opposition from the Attorney General, we find petitioner diligently pursued his appeal by attempting to contact his trial attorney within the 60-day filing period, and by promptly filing this petition for writ of habeas corpus when he found out no appeal had been filed.

The entitlement to a belated appeal encompasses as complete an appeal as a defendant may be entitled to, which would include in this case the opportunity to file a request for a certificate of probable cause. (Cf. *In re Jordan* (1992) 4 Cal.4th 116, 131, fn. 9; *In re Benoit, supra*, 10 Cal.3d at pp. 86-87, 89; *People v. Tucker* (1964) 61 Cal.2d 828, 832); *People v. Graff* (1951) 104 Cal.App.2d 32, 34.)

Therefore, we grant petitioner's request to file a belated notice of appeal and certificate of probable cause, if necessary.

### **DISPOSITION**

Petitioner is directed to file, on or before 60 days from the date of this opinion, a notice of appeal and request for a certificate of probable cause in Stanislaus County Superior Court action No. 4006542. (*People v. Everett* (1986) 186 Cal.App.3d 274, 281.)

Let a writ of habeas corpus issue directing the Clerk of the Stanislaus County Superior Court, if the notice and request are received on or before 60 days from the date of this opinion, to file the documents in Stanislaus County Superior Court action No. 4006542, to deem the documents to be timely filed, to cause the request for a certificate of probable cause to be brought before the superior court for a ruling pursuant to Penal Code section 1237.5, and to cause the normal record on appeal to be prepared, served on the parties and filed in this court in accordance with the applicable rules of the California Rules of Court.

This opinion is final forthwith as to this court.